

'Show me the money': settling workers' compensation claims when a worker can't return to work

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The objective of every workers' compensation system is to provide an injured worker with reasonable and necessary medical care and wage replacement while they recover from an injury. The expectation is that when recovery is reached, the worker will return to their job of injury and benefits will cease. That happens with the vast majority of injuries. The systems work. But what happens when the worker does not recover, or recovers but cannot return to their job of injury?

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Workers' compensation systems vary as to the continuing benefits available to the worker. From the perspective of the employer and their workers' compensation carrier, their new objective is typically to get the claim settled and off their books. For the injured worker, they want to know what they'll receive for their injury. As the character Rod Tidwell so succinctly stated in 1996's "Jerry Maguire": "Show me the money!"

Most systems allow workers' compensation claims to be resolved by agreement of the parties, subject to approval by the appropriate administrative body or by the courts. The standard for approval of a workers' compensation claim is typically either "reasonableness," "adequacy," or being "in the best interest of the parties." These terms are generally interchangeable when determining the value of a settlement. The idea is to make sure the employer and its carrier are providing sufficient compensation for the worker so that the worker is not dependent on the state or federal government for support or medical care.

For workers' compensation settlements, these adequacy provisions depend on the type of claim. When a worker is injured, the settlement needs to adequately compensate them for any past and future indemnity and medical benefits. For death claims, the settlement needs to adequately compensate the decedent worker's

dependents, including their surviving spouse and/or minor children, along with providing funeral expenses.

Because no two workers' compensation claims are identical, adequacy varies state by state and sometimes claim by claim. Webster's Dictionary defines the word 'adequate' as "sufficient for a specific need or requirement" and "lawfully and reasonably sufficient." So, what makes a workers' compensation settlement adequate?

What's in a settlement?

Following informal negotiations, arbitration, or mediation, the parties must submit a formal settlement agreement to the workers' compensation court for approval. Generally, the agreement contains information about the injured workers' employment, subject accident, and subsequent injury; procedural history and issues of dispute; monetary details of the settlement; and proof of adequacy of the settlement.

The monetary details of the settlement include provisions outlining how much an injured worker or decedent worker's dependents will receive for indemnity benefits, medical benefits, and/or funeral expenses. If an injured worker is represented by counsel, the amount of attorney fees — if resolved — will be listed as well. From there, the settlement must describe how those figures adequately compensate the injured worker or decedent worker's dependents.

Compensation/ indemnity benefits

When a worker becomes injured at work, they are likely unable to work in some capacity for a certain period of time, indefinitely, or even permanently. This entitles them to wage replacement benefits, also known as indemnity benefits. Indemnity benefits are classified as either temporary or permanent and either total or partial. These benefits give the injured worker a percentage of their average weekly wage on a tax-free basis to replace their prior earnings.

Most systems only allow settlements once permanency is reached, so temporary benefits are almost never settled. Permanency has been reached when either the injured worker has reached maximum medical improvement and is able to work or suitable alternative employment has been identified. Whether indemnity benefits are total or partial in nature depends on whether the injured worker is totally or partially disabled, i.e., whether the injured worker can work in some capacity.

When determining whether an injured worker can return to work, the parties generally rely on the medical opinion of treating physicians, supplemented by second medical opinions, independent medical examinations, functional capacity evaluations, vocational rehabilitation evaluations, and labor market surveys. These don't just help determine whether an injured worker can return to work or the amount of indemnity benefits to which they are entitled. They can also help show adequacy in a settlement.

Vocational rehabilitation evaluations and labor market surveys are generally used to offset the rate of an injured worker's indemnity benefits. Labor market surveys provide the injured worker with information regarding available jobs within their physical work capacity, considering their education, training and skills. Using the findings from a vocational rehabilitation evaluation and labor market survey in a settlement helps show that even if the injured worker settled the indemnity portion of their claim for less than the present value of lifetime benefits, there is employment available to them should they decide to return to work.

Death benefits can present more difficulty in evaluating adequacy. Benefits are awarded to those who were financially dependent on the decedent worker, which is usually the decedent worker's surviving spouse and minor children.

Death benefits are otherwise guaranteed for the life of the surviving spouse, with statutory provision for annual cost of living increases ("COLA"). Determining the amount for an adequate settlement requires consideration not only of the anticipated life expectancy of the surviving spouse, but also the COLA and present value discount rate. For a minor child, most systems only provide benefits until adulthood or the completion of a college education.

Medical benefits

Whether an injured worker has been adequately compensated for medical benefits depends on the claim. Medical opinions and recommendations for care dictate how much an injured worker should be compensated for medical expenses. While the settlement amount allotted to past and future medical expenses may sometimes appear arbitrary, the amount should consider Claimant's past and current treatment, and potential future treatment.

About the authors



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In 2020, the California Workers' Compensation Appeals Board ("WCAB") in *Atkins v. Santa Barbara Metropolitan Transit District* rescinded a Workers' Compensation Judge's Order Approving Compromise & Release due to a lack of adequacy. The parties in the case had settled the issues arising out of employment/course of employment, temporary disability, permanent disability, and future medical treatment for \$17,500.

After reviewing the medical evidence, the WCAB found the settlement amount to be inadequate, as there was a possibility of future shoulder surgery and the medical reports did not address permanent disability. Because the settlement amount was inadequate considering potential costs of indemnity and future medical treatment, the WCAB rescinded the settlement order.

Unlike the State of California, the State of Texas does not allow an injured worker to settle the medical portion of their workers' compensation claim. Rather, if the claim is accepted, the injured worker is entitled to reasonable and necessary medical benefits related to their work-related injury or condition for life. This ensures the injured worker has coverage for the medical benefits they may need and that those medical costs do not fall on the state or federal government.

Ultimately, the amount allotted to the payment of past and future medical expenses is arbitrary. Unless Medicare's interest must be considered, it is on the parties to show that an injured worker has been adequately compensated for medical expenses. This can be shown by outlining the medical treatment received to date, along with the treating and expert physicians' recommended treatment plans. The parties can also use workers' compensation treatment pay schedules to show the cost of past and future treatment.

Parties to a workers' compensation claim should not take the adequacy of a settlement lightly. While settlement is almost always a preference over litigation in the workers' compensation system, parties should work together to ensure the injured worker is adequately compensated for past and future indemnity and medical benefits for their work-related injury or condition.

Alan G. Brackett is a regular contributing columnist on workers' compensation law for Reuters Legal News and Westlaw Today.